

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of GREGORY FRANK CAYTON,  
III, and TREASURE LESLIE CAYTON, Minors.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CHERRISH L. DUBAY,

Respondent-Appellant,

and

GREGORY FRANK CAYTON, JR.,

Respondent.

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UNPUBLISHED

July 9, 2009

No. 288146

Macomb Circuit Court

Family Division

LC Nos. 2007-000454-NA &  
2007-000455-NA

Before: Owens, P. J., and Servitto, and Gleicher, JJ.

PER CURIAM.

Respondent mother (hereafter “respondent”) appeals as of right from the trial court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).<sup>1</sup> We affirm.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been met by clear and convincing evidence and that termination is in the best interest of the child(ren). MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). The trial court’s decision terminating parental rights is reviewed for clear error. MCR 3.977(J); *In re Trejo Minors*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); *Sours, supra* at 632-633. A finding is clearly erroneous if,

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<sup>1</sup> The parental rights of the children’s father, Gregory Frank Cayton, Jr., were also terminated but he is not a party to this appeal.

although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 455 NW2d 161 (1989). Regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

Termination of respondent's parental rights was proper under MCL 712A.19b(3)(c)(i) and (g). The children were adjudicated temporary court wards based on environmental neglect, domestic violence and respondent's mental health issues. By the time of the permanent custody hearing, respondent continued to be without suitable housing. She also failed to address the domestic violence between her and the children's father or to seek therapy and psychiatric care.

Respondent's failure to comply with her parent-agency agreement is evidence of her failure to provide proper care and custody for the children. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). The record shows that respondent failed to substantially comply with her treatment plan. Respondent had recently used drugs and failed to seek substance abuse treatment. She admitted that her income was insufficient to support her children. She also failed to complete the terms of her criminal probation. Respondent argues that she was in compliance with her treatment plan because she completed parenting classes. However, respondent failed to benefit from parenting classes. A parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW 2d 708 (2005).

Respondent argues that she did not lack parenting skills but that her son's special needs made him difficult to control. She argues that she should have been given additional parenting classes to instruct her on caring for a special needs child. Respondent also contends that petitioner had a duty to tailor her treatment plan towards her family but failed to do so. Respondent's argument is without merit because she fails to show how her treatment plan was not tailored to the needs of her and her family. Although one of the children was diagnosed with Post-Traumatic Stress Disorder, there is no evidence supporting respondent's contention that she needed specialized parenting classes to help her. Respondent was referred to parenting classes, but failed to benefit from those classes. There is no evidence that respondent's parenting deficiencies were related to the child's special needs. Respondent's unresolved mental health and personal issues, due to her refusal to attend therapy, undoubtedly impeded her parenting skills.

Respondent also argues that petitioner failed to take into account her limitations or disabilities and to make any reasonable accommodations, and thus it cannot be found that reasonable efforts were made to reunite the family. A claim that reasonable services were not offered to a respondent ultimately relates to the issue of the sufficiency of the evidence to terminate parental rights. *In re Fried*, 266 Mich App 535, 542; 702 NW2d 192 (2005). Additionally, respondent has not provided legal authority to establish that petitioner's failure to make reasonable efforts establishes a basis for relief. MCL 712A.18f(4). Rather, the absence of reasonable efforts by petitioner has only been relevant to assessing whether the statutory grounds for termination were established. See, e.g., *In re Newman*, 189 Mich App 61, 65-68; 472 NW2d 38 (1991). Contrary to respondent's assertion, she was offered services; she simply failed to take advantage of the services offered to her. Her needs and issues could have been addressed in therapy and through psychiatric care, but she failed to seek treatment. Moreover, the court did

not clearly err in terminating respondent's parental rights under three statutory bases, none of which was due to petitioner's failure to offer her services.

Additionally, respondent failed to identify her disabilities that warranted special accommodations. A respondent may not announce her position and leave it to this Court to discover or rationalize the basis for her claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). There is no evidence that petitioner's efforts were inconsistent with the directive of the Americans With Disabilities Act (ADA), 42 USC 12101 *et seq.*, that disabilities be reasonably accommodated. *In re Terry*, 240 Mich App 14; 610 NW2d 563 (2000).

Termination of respondent's parental rights was also proper under MCL 712A.19b(3)(j). Respondent never addressed her domestic violence or mental health issues. She did not demonstrate that she was drug free but rather admitted to smoking marijuana, using sleeping pills, and ingesting cocaine. She also failed to complete the terms of her probation and failed to seek psychiatric care to address her mental health problems. Exposure to domestic violence, mental instability, drug abuse, and criminality would subject the children to risk of physical and emotional harm. Thus, termination of respondent's parental rights was proper under MCL 712A.19b(3)(j).

Finally, the evidence showed that termination of respondent's parental rights was clearly in the best interests of the children. Respondent argues that other than the caseworker's opinion, there was no evidence regarding the best interest of the children. Despite respondent's assertion, there is no specific burden on either party to present evidence of the child's best interests; rather, the trial court should weigh all evidence available. *In re Trejo, supra* at 354. Based on the record as a whole, the court correctly found that termination of parental rights was in the children's best interest because they needed a safe, stable environment and respondent was unable to provide one. Termination of respondent's parental rights was in the best interest of the children because respondent has unresolved substance abuse and domestic violence issues. Respondent was unable to provide housing for the children and she did not have the necessary parenting skills to care for them. Thus, the trial court did not clearly err in its best interest determination.

Affirmed.

/s/ Donald S. Owens  
/s/ Deborah A. Servitto  
/s/ Elizabeth L. Gleicher